

EXHIBIT 3: Correspondence



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

AUG - 5 2002

In Reference Reply To:
151422\$WR02SR6178:TKD

Tom Schott
District Conservationist
Natural Resources Conservation Service
405 South Orchard
Ukiah, California 95482

Dear Mr. Schott:

This letter is in response to your May 14, 2002 request for concurrence with the Natural Resources Conservation Service's determination that the proposed permit coordination program is not likely to adversely affect threatened California Coastal chinook salmon, Northern California steelhead, Central California Coast coho salmon, or critical habitat designated for coho salmon.

The Natural Resources Conservation Service (NRCS) proposes a watershed regulatory permit program to be implemented in the Navarro River watershed. NRCS's federal action consists of providing a coordinated permit program to qualified private landowners who are performing a defined set of conservation activities. This program provides cost sharing and technical assistance from the NRCS and the Mendocino County Resource Conservation District for projects that are designed to improve salmonid habitat.

The NRCS estimates that the number of projects to be covered under this program within the Navarro River watershed would be five to 10 annually. The permit coordination program would not cover projects that involve dewatering, grade stabilization structures in fish bearing streams, water diversions, or dams. In addition, the permit coordination program would not cover projects that the National Marine Fisheries Service (NOAA Fisheries) determines may result in adverse effects to salmonids or their habitat. In these cases NRCS will conduct Section 7 consultations on a project by project basis.

Under this program NRCS proposes to implement conservation practices within the Navarro River watershed that fall within eight major categories. Descriptions of the proposed conservation practices are listed below.

Access Roads

Projects will be designed to improve existing roads to control runoff, prevent road related erosion to improve water quality and improve



EXHIBIT 3: Correspondence

access for landowners. Projects in this category would include regrading of roads including out sloping and constructing rolling dips to reduce sediment delivery to the stream channel network.

Critical Area Planting

This practice utilizes planting of trees, shrubs, and grasses on highly erodible areas to stabilize soil, reduce delivery of sediment to stream channels and improve wildlife and visual resources.

Fish Stream Improvement

These projects are designed to improve or enhance aquatic habitat for salmonids. Placement of rock or large woody debris structures is proposed to restore frequency and quality of pool habitat.

Grade Stabilization

These structures are restricted to non-fish bearing streams. Structures are placed in channels to reduce flow velocity resulting in reduced erosion. These structures are designed to capture sediment and reduce sediment delivery to the stream channel network.

Road and Landing Removal

These projects focus on removal of old roads which have been identified as long time sources of sediment delivery to stream channels. In addition, projects would include removal of landings and ramp fills which have the potential to deliver large quantities of sediment to channels.

Stream Bank Protection

Projects will be designed to stabilize banks by constructing structures that protect eroding banks from high flow events that cause accelerated bank erosion in stream channels.

Stream Channel Stabilization

This practice involves stabilizing the stream channel with structures. These projects will be conducted on streams where damage or channel degradation can not be controlled with upstream practices.

Structure for Water Control

These projects consist of replacement or retrofit of existing culverts that are not functioning properly or are barriers to fish passage. Placement of new culverts is also covered under this category.

In order to avoid adverse effects to listed salmonids NRCS staff engineers and biologists worked with NOAA Fisheries staff to develop general measures for projects covered by this program. The measures include specifics with regard to: temporal limitation on construction; limitation on earthmoving; limitations on construction equipment;

revegetation and exotic plants; conditions for erosion control; limitations on work in streams and permanently ponded areas; limitations on use of herbicides.

EXHIBIT 3: Correspondence

In addition to general measures to avoid adverse effects to salmonids and their habitat, measures and conditions have been developed for specific conservation practices. Depending on the proposed conservation practice, specific measures require that projects meet National Marine Fisheries Service South West Region Water Drafting Specifications (August 2001), National Marine Fisheries Service South West Region Fish Screening Criteria, National Marine Fisheries Service South West Region Guidelines for Salmonid Passage at Stream Crossings (September 2001) as well as other measures to minimize impacts. Road projects are required to be developed with the use of the "Handbook for Forest and Ranch Roads: A Guide for Planning, Constructing, Reconstructing, Reconstructing, Maintaining and Closing Wildland Roads" prepared by Pacific Watershed Associates in 1994.

NRCS also proposes to submit a summary of proposed projects on an annual basis which will include details of the construction techniques, stream conditions at the time of work, and proximity and connectivity to known salmonid habitat. NOAA Fisheries will review the proposed projects and can respond with additional conditions to avoid adverse effects or can send a non-concurrence for projects that are inconsistent with the approved practices. Projects that do not meet the requirements of the NRCS permit coordination program will be required to seek individual permits from State and Federal agencies.

Conservation practices are expected to reduce long term sediment delivery to stream channels within the Navarro River watershed. Both roads and gullies are major contributors of sediment to stream channels in the watershed according to the Navarro River Watershed Restoration Plan produced by Entrix Incorporated in 1998. Roads contribute 26% (127,000 tons per year) and gullies contribute 16% (77,800 tons per year) of the sediment production in the watershed.

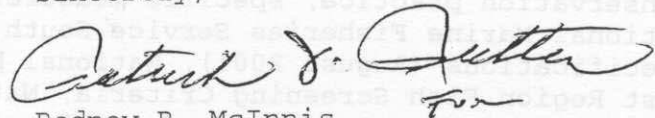
Some projects may have the potential to cause short term adverse effects to salmonids if projects are located short distances from salmonid spawning reaches. These projects will not occur due to the annual program review process by NOAA Fisheries staff biologists. Site specific characteristics of each project, such as proximity of the project to spawning and rearing habitat, specific stream use by salmonids, proposed conservation practice and specific proposed avoidance measures will be evaluated to avoid adverse effects.

Based on the available information, I concur that the NRCS permit program, as proposed, is not likely to adversely affect threatened California Coastal chinook salmon, Northern California steelhead, threatened Central California Coast coho salmon or critical habitat designated for coho salmon. This concludes the consultation pursuant to section 7 of the Endangered Species Act for the proposed NRCS coordinated permit program. Should the project plans change, or if additional information becomes available, this determination may be reconsidered.

EXHIBIT 3: Correspondence

If you have any questions concerning these comments, please contact Mr. Thomas Daugherty at (707)468-4057.

Sincerely,



Rodney R. McInnis
Acting Regional Administrator

cc: J. Lecky - NOAA Fisheries

EXHIBIT 3: Correspondence



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2197

REPLY TO

Regulatory Branch

SUBJECT: File No. 280250N

Mr. Tim Walls
Mendocino County Resource Conservation District
405 South Orchard Avenue
Ukiah, California 95482

Dear Mr. Walls:

This letter is in reference to your Pre-Construction Notification of May 29, 2003, on behalf of the Natural Resources Conservation District (NRCS) and Mr. Robert Lawson, concerning Department of the Army authorization to stabilize 400 lineal feet of bank along an unnamed tributary to Rancheria Creek to protect adjacent agricultural property at 28574 Elkhorn Road (APNs 049-34-037, -038), in the Town of Yorkville, Mendocino County, California. The project would entail the excavation of a keyway along the toe-of-slope; back grading of the bank to establish a uniform 2:1 gradient; placement of approximately 400 cubic yards of rock in the keyway and partially up the graded bank below the plane of ordinary high water; and installation of sprigs, brush mattresses, and rooted cuttings of native riparian plant species on the remainder of the graded bank. The operation of construction equipment would occur generally from the top-of-slope. The bank stabilization work would be constructed in general accordance with Sheets 8-12 of the Pre-Construction Notification. The project would also entail the stabilization of six gullies that are not subject to Corps of Engineers (Corps) regulatory authority.

Based on a review of the information in your submittal, the project qualifies for authorization under Department of the Army Nationwide Permit 27 for *Stream and Wetland Restoration Activities* (67 FR 2,020; Jan. 15, 2002), pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Section 404 regulates the discharge of dredged and fill material below the plane of ordinary high water in non-tidal waters of the United States and within the lateral extent of wetlands adjacent to these waters.

The project must be in compliance with the Terms and General Conditions of the nationwide permit cited in Enclosure 1 and any Special Conditions specified in this letter for the nationwide permit authorization to remain valid. Non-compliance with any term or condition could result in the revocation of the nationwide permit authorization for your project, thereby requiring you to obtain an individual permit from the Corps. Upon completion of the project and all associated mitigation and monitoring requirements, you shall sign and return the statement cited in Enclosure 2, certifying all work complies with the terms and conditions of the nationwide permit. Project authorization under the nationwide permit does not obviate any requirement to obtain other Federal, State, or local approvals necessitated by law.

EXHIBIT 3: Correspondence

-2-

Project authorization will remain valid for a period of two (2) years from the date of this letter, unless the nationwide permit is modified, suspended or revoked. If the project has commenced or is under contract to commence construction prior to any modification, suspension, or revocation of the nationwide permit and the project could not comply with any newly issued nationwide permit, you shall have twelve (12) months from that date to complete the project under the present terms and conditions of this nationwide permit authorization.

Project authorization will not be effective until you have obtained Section 401 water quality certification or a waiver from the Regional Water Quality Control Board (RWQCB), North Coast Region. You shall comply with any condition of certification required by the RWQCB and consider such conditions to be an integral part of the nationwide permit authorization for your project. The RWQCB previously issued waste discharge requirements and water quality certification for the project on March 27, 2003.

General Condition 11 stipulates the project authorization under a nationwide permit does not allow the incidental take of federally-listed species in the absence of a biological opinion with incidental take provisions. As the principal federal lead agency for this project, the NRCS initiated consultation with the National Marine Fisheries Service (NMFS) to address project related impacts to salmonid fish species and designated critical habitat, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). By letter of August 5, 2002, the NMFS concurred with the determination that the project was not likely to adversely affect threatened salmonid fish species and critical habitat for coho salmon. This concurrence was premised, in part, on project timing restrictions to avoid the principal migratory period for salmonids and on project work restrictions to preclude any operation of equipment in flowing water. These timing and work restrictions are incorporated as special conditions to the nationwide permit authorization for the project to ensure unauthorized incidental take of threatened salmonids and loss of critical habitat do not occur.

To ensure compliance with this nationwide permit authorization and to further minimize adverse effects to aquatic resources, including endangered species and designated critical habitat, the project is subject to the following Special Conditions:

1. All work occurring below the plane of ordinary high water shall be confined to the low-flow period of June 15 to October 15 to avoid the principal migratory period of salmonid fish species.
2. Operation of heavy construction equipment shall occur generally from the top-of-slope. No operation of construction equipment shall occur directly in the flowing creek channel.
3. The placement of rock slope protection shall generally extend not more than five (5) feet above the toe-of-slope. Appropriate bio-engineering stabilization measures, such as the use of sprigs, brush mattresses, and rooted cuttings of native riparian plant species, shall be used on the remainder of the disturbed bank.

EXHIBIT 3: Correspondence

-3-

4. All construction work shall be performed in a manner to avoid and minimize the further loss of native riparian vegetation adjacent to the affect creek. Where complete avoidance is not feasible, riparian vegetation shall be tied back, pruned, or cut at grade, rather than grubbed and removed, to promote re-sprouting and habitat recovery. To compensate for the unavoidable loss of riparian vegetation with a diameter breast height (dbh) greater than six (6) inches, native trees and shrubs shall be planted at a 3:1 replacement ratio within the immediate project reach. All replacement plantings shall be maintained and monitored for at least three (3) growing seasons thereafter to attain an 80 percent survival rate at the conclusion of the monitoring period.
5. Outside of the immediate project reach, all disturbed areas of the creekbed and bank shall be restored to the approximate contour elevation and condition that existed prior to construction. Excavated substrate material consisting of coarse sand, gravel, and cobble may be used as backfill material for project construction purposes or to restore disturbed areas of the creekbed; all other material excavated below the plane of ordinary high water, including debris, mud, silt, and organic matter, shall be hauled off-site and disposed at an upland location not subject to Corps' regulatory authority.
6. All construction work shall incorporate appropriate best management practices, including stabilizing and seeding exposed upland slopes, to control and minimize bank erosion, sediment input, and turbidity in the affected creek.
7. Within thirty (30) days after project completion, a fully executed copy of the "Cooperator Agreement" between the agency and landowner shall be provided to the Corps.

You may refer any questions on this matter to Mr. Peter Straub of my staff at telephone 415-977-8443. All correspondence should be addressed to the Regulatory Branch, North Section, referencing the file number at the head of this letter.

Sincerely,
ORIGINAL SIGNED
BY
CHIEF, NORTH SECTION
FOR

Jane M. Hicks
Chief, North Section

EXHIBIT 3: Correspondence

-4-

Enclosures

Copies Furnished:

US NRCS, Ukiah, CA

US NMFS, Santa Rosa, CA

CA RWQCB, Santa Rosa, CA

Robert Lawson, Yorkville, CA

EXHIBIT 3: Correspondence

Enclosure 1

Nationwide Permit Terms -- March 18, 2002

27. Stream and Wetland Restoration Activities. Activities in waters of the U.S. associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) **Notification:** For activities on any public or private land that are not described by Paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under Paragraph (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under Paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner

EXHIBIT 3: Correspondence

Enclosure 1

Nationwide Permit General Conditions – March 18, 2002

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

- 1. Navigation.** No activity may cause more than a minimal adverse effect on navigation.
- 2. Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
- 3. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
- 4. Aquatic Life Movements.** No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
- 5. Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 6. Regional and Case-Bv-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (See 33 CFR Part 330.4(e).) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.
- 7. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
- 8. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- 9. Water Quality.**
 - (a) In certain states and tribal lands an individual Section 401 Water Quality Certification must be obtained or waived. (See 33 CFR Part 330.4(c).)
 - (b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal Section 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. (Refer to General Condition 21 for stormwater management requirements.) Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams. (Refer to General Condition 19 for vegetated buffer requirements for the NWPs.)

EXHIBIT 3: Correspondence

Enclosure 1

(b) **Contents of Notification:** The notification must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);
- (4) For NWPs 7, 12, 14, 18, 21, 29, 31, 34, 38, 39, 40, 41, 42, and 43, the PCN must include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (See Paragraph 13(f) below.);
- (5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;
- (6) For NWP 14 (Linear Transportation Projects), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the U.S. and a statement describing how temporary losses of waters of the U.S. will be minimized to the maximum extent practicable;
- (7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;
- (8) For NWP 27 (Stream and Wetland Restoration Activities), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;
- (9) For NWP 29 (Single-family Housing), the PCN must include:
 - (i) Any past use of this NWP by the prospective permittee and/or the permittee's spouse;
 - (ii) A statement that the single-family housing activity is for a personal residence of the permittee;
 - (iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 1/4 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4 acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See Paragraph 13(f) below.);
 - (iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;
- (10) For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:
 - (i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;
 - (ii) A delineation of any affected special aquatic sites, including wetlands; and
 - (iii) Location of the dredged material disposal site;
- (11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;
- (12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;
- (13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;
- (14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to

EXHIBIT 3: Correspondence

Enclosure 1

item (2) above, no work in waters of the U.S. will occur until the District Engineer has approved a specific mitigation plan.

(e) **Agency Coordination:** The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2 acre of waters of the U.S., the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) **Wetland Delineations:** Wetland delineations must be prepared in accordance with the current method required by the Corps. (For NWP 29 see Paragraph (b)(9)(iii) for parcels less than 1/4 acre in size.) The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the U.S. authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the U.S. for the total project cannot exceed 1/3 acre).

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the CWA.)

EXHIBIT 3: Correspondence

Enclosure 1

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting of its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the U.S., or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the U.S. may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the FWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. Fills Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) Discharges in Floodplain; Below Headwaters. Discharges of dredged or fill material into waters of the U.S. within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44.

EXHIBIT 3: Correspondence

Enclosure 2

Permittee: Natural Resources Conservation Service
Mendocino County Resource Conservation District
Guido Pronsolino

File No. 280260N

Certification of Compliance for Nationwide Permit

"I hereby certify that the work authorized by the above referenced file number and all required mitigation and monitoring have been completed in accordance with the terms and conditions of the nationwide permit."

PERMITTEE

DATE

Return to:

Regulatory Branch, North Section
Department of the Army
U.S. Army Engineer District, San Francisco
333 Market Street, CESPN-OR-R
San Francisco, CA 94105-2197

EXHIBIT 3: Correspondence



State of California - The Resources Agency

GRAY DAVIS, Governor

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>
POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500



May 13, 2003

Mr. Bob Neale
Sustainable Conservation
121 2nd Street, Floor 6
San Francisco, CA 94105

Dear Mr. Neale:

Memorandum of Agreement
Permit Coordination Program
Streambed Alteration Notification and Agreements
California Central Coast Area

Enclosed are one original and one copy of the executed Memorandum of Agreement for the Partners in Restoration Permit Coordination Program. Please forward the documents as appropriate to the participants. I appreciate the hard work that has gone into this project and look forward to a productive continuing effort with all the participating resource conservation districts. This program should assist in our continued coordination and the development of projects and streambed alteration agreements that conserve habitat values for fish and wildlife in central coastal California.

If you have any questions, please do not hesitate to contact me at (707) 944-5584.

Sincerely,

Scott Wilson
Habitat Conservation Supervisor
Central Coast Region

Conserving California's Wildlife Since 1870



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**MEMORANDUM OF AGREEMENT
BETWEEN
THE CALIFORNIA DEPARTMENT OF FISH AND GAME,
THE NATURAL RESOURCES CONSERVATION SERVICE,
AND RESOURCE CONSERVATION DISTRICTS
REGARDING THE PARTNERS IN RESTORATION
PERMIT COORDINATION PROGRAM AND
STREAMBED ALTERATION NOTIFICATION AND AGREEMENTS**

Whereas, the Department of Fish and Game (DFG) is charged with the protection and enhancement of the fish and wildlife resources of the State of California; and

Whereas, the protection of fish and wildlife resources depends largely upon the preservation of the quality and quantity of their respective habitats; and

Whereas, Fish and Game Code Sections 1601 and 1603 requires notification of DFG whenever a project will obstruct or divert the natural flow or change the bed, channel, or bank of any river, stream or lake; and

Whereas, Fish and Game Code Sections 1601 and 1603 allows DFG to propose reasonable modifications to public agency and private landowner construction projects as would allow for the protection and continuance of existing fish and wildlife resources that may be substantially adversely affected by that construction project; and

Whereas, consistent with the policies of Fish and Game Code Section 1600 et seq. the protection and conservation of the fish and wildlife resources of California are of utmost public interest and fish and wildlife conservation is a proper responsibility of the State; and

Whereas, the missions of the Natural Resources Conservation Service (NRCS) and the signatory Resource Conservation Districts (RCDs) are to work in partnership to provide technical assistance and cost-sharing to private landowners to assist them with conservation projects on their property to reduce erosion and sedimentation and thereby protect surrounding natural resources; and

Whereas, the NRCS and RCDs have, and continue to, worked closely with local community groups to create watershed plans and to protect and improve the biological functioning of their watersheds and natural resources, and have been identified as appropriate organizations to assist local landowners in implementing the plan; and

Whereas the NRCS and RCDs, in cooperation with DFG and other local, state and federal regulatory agencies are cooperating in establishing Partners in Restoration permit coordination programs (Programs) to coordinate and simplify the regulatory review process to encourage private landowners to implement habitat enhancement and protection projects on their property; and

EXHIBIT 3: Correspondence

Whereas the NRCS conservation practices included in the Programs are recommended by the U.S. Environmental Protection Agency, the California State Water Resources Control Board, the California Coastal Commission and DFG as appropriate resource management practices to protect and restore fish and wildlife habitat and are small in scope and are designed to have minimal adverse impacts on the environment; and

Whereas, this Memorandum of Agreement (MOA) is not intended to affect NRCS and RCD rights under the Fish and Game Code Section 1601 (f) or private landowners under Section 1603 (f) to undertake work necessary to protect life or property or constitute a waiver of NRCS and RCDs claimed rights to implement or maintain conservation practices in areas outside DFG's jurisdiction; and

NOW, THEREFORE, IT IS AGREED THAT:

1. DFG, NRCS, and RCDs in each area where the Program is established will develop and agree upon a template 1601/1603 agreement (Template Agreement) for this process. Each Template Agreement is attached as Exhibit A1, A2, and continuing in this sequence for each Program and becomes part of the MOA. Individual 1601/1603 Agreements (Individual Agreement), based on each Program's Template Agreement, will be completed for each project developed under each Program.

2. Under each Program, the NRCS shall enter into a "Cooperator Agreement" with the landowner and/or party legally responsible for carrying out the work (Operator) and contractors performing work associated with the project and shall have the Operator sign a draft 1601/1603 Individual Agreement (Draft Agreement), based on the Template Agreement. The RCD and NRCS shall ensure that: 1) the name and address portion at the top of the Draft Agreement is completed, 2) the Draft Agreement is dated, 3) the DFG assigned notification number is on the Draft Agreement, 4) the Draft Agreement contains the original signature of the Operator, and 5) the Draft Agreement includes a brief project description which includes the following information:

1. Nature of work to be accomplished and reason why the applicant is carrying out the project.
2. Location of project (address and landmarks to guide someone to the project site), name of creek/tributary, and the stream it drains to.
3. Dimensions of area of impact, description of materials, areas of revegetation/restoration, facilities or vegetation removed and installed.
4. Environmental setting – surrounding habitats and vegetation, current land use and surrounding land uses (farmland, urban, rural, etc.)
5. Potential presence of sensitive species and quality of habitat.
6. Estimated location and number of creek crossings, number of times crossing will be necessary, and type of vehicle used (track or rubber tire).
7. Presence of barriers to aquatic species migrations, if any.
8. Pre-project visual assessment of vegetation conditions when native vegetation will be removed and revegetation will occur.

EXHIBIT 3: Correspondence

3. The NRCS and RCD shall retain the Draft Agreement until the final design for the Cooperator Agreement is completed.
4. When the final design for the Cooperator Agreement is completed, the NRCS and RCDs shall send the signed Draft Agreement to DFG. These Draft Agreements shall be sent to: Department of Fish and Game, Streambed Alteration Program, Post Office Box 47, Yountville, CA 94599.
5. DFG shall review the Draft Agreements for consistency with the Template Agreements, conduct its environmental review pursuant to California Environmental Quality Act (CEQA), and sign the Draft Agreements. Once signed, the Draft Agreements are considered final, Individual Agreements. DFG shall then return the Individual Agreements to the RCDs and local NRCS at the appropriate address listed under Paragraph 12 below. DFG shall make every attempt to return the Individual Agreements within 15 days of receipt.
6. If DFG receives a request from the Operator to amend an Individual Agreement, DFG shall notify and consult with the NRCS and RCDs before approving the request. DFG shall also notify the NRCS and RCDs if they subsequently approve the requested amendment.
7. The NRCS shall attach the Individual Agreement to the signed Cooperator Agreement. The NRCS shall notify the Operator in the Cooperator Agreement that the Individual Agreement is an additional binding requirement, supplemental to the Cooperator Agreement.
8. Each RCD shall provide to DFG, within 30 days of execution of this MOA, and/or within 30 days of becoming a signatory to this MOA, a check in the amount of \$2,400.00 to cover DFG's cost for the first 25 Individual Agreements completed under their respective Program. In the event that additional projects and Individual Agreements will be required before the expiration of this MOA, the RCDs shall forward a check for \$500 for each additional five agreements. The checks shall be mailed to: Department of Fish and Game, Streambed Alteration Program, Post Office Box 47, Yountville, CA 94599 and shall reference 'Name of Watershed' MOA Individual Agreement Fee" and the RCD's name on the check and cover letter.
9. The NRCS and/or RCD shall provide to DFG, written notification of the proposed Program projects to be performed that year by June 1 of each year. Additional projects may be submitted after this date, at DFG's discretion. This notification shall consist of a list of projects, their location, stream name, operator names, practices to be used, and a map showing their locations. Upon receipt of the written notification, DFG shall assign a notification number to each project. These numbers will be sent via email to NRCS and RCD staff. The assigned notification number shall be included on the Draft Agreements that the NRCS and RCDs send to DFG per Condition 4 above. DFG may request, within 21 days of the receipt of the written

EXHIBIT 3: Correspondence

notification, a meeting with the NRCS and RCD to review future projects at a mutually agreed upon time and place within 30 days of the request. DFG will verify the consistency of individual projects with the goals and conditions of the Program and may provide additional conditions to the Draft Agreement for those projects. The NRCS and RCD shall include such conditions as part of the project plan. DFG may provide additional information on species of concern that may be in the project area and DFG may require additional conditions such as surveys, avoidance, or development of mitigation measures.

10. NRCS and RCDs shall provide an annual report to DFG. The report shall list participating Operators and describe each specific project's purpose, location, DFG notification number, area affected, natural resource enhancements, and modification to the bank or channel. It shall list conservation benefits including gains in wetland and riparian areas, revegetation success, and provide photo documentation of site conditions before and after implementation. For projects where revegetation is a component, projects from previous years will also be included in each annual report until success, as described in the Individual Agreement, is achieved. The annual report shall be based on NRCS status reviews and shall be due January 31.

11. This MOA and its Exhibits cannot be amended or modified in any way except by written notification duly executed by DFG, RCDs, and NRCS. Any proposal for amendment or modification must be delivered for review and approval by DFG, the NRCS and the affected RCDs.

Notwithstanding the foregoing, the addition of Resource Conservation Districts as signatories to this MOA shall not require the written consent of all the signatories hereto, but may be accomplished by such Resource Conservation Districts with the written consent of the NRCS and DFG.

Participation of a signatory in this MOA may be terminated by any party following a 30-day written notice by that signatory. Upon termination, the activities of the Operators shall be governed by applicable provisions of Fish and Game Code section 1600 et seq. This MOA shall remain in effect until December 31, 2008 unless extended by mutual written agreement of all parties.

12. All written notifications herein provided to be given or which may be given by any one party to the others, shall be addressed to the following. Contact information for additional signatories will be included on their signature pages.

Department of Fish and Game
Scott Wilson, 1600 Program Supervisor
Department of Fish and Game
Central Coast Region
P. O. Box 47
Yountville, CA 94599
(707) 944-5584
swilson@dfg.ca.gov

EXHIBIT 3: Correspondence

NRCS State Office

Dianne Holcomb
NRCS
430 G Street, #4164
Davis, CA 95616
(530) 792-5667
diane.holcomb@ca.usda.gov

Elkhorn Slough Program

Emily Hanson
Resource Conservation District of Monterey County
744 La Guardia Street, Bldg. A
Salinas, CA 93905
(831) 424-1036 x 124
rcdmonterey@yahoo.com

Cheryl Lambert
NRCS
744 La Guardia Street, Bldg. A
Salinas, CA 93905
(831) 424-1036
cheryl.lambert@ca.usda.gov

Coastal Marin Watersheds Program

Nancy Scolari
Marin Resource Conservation District
PO Box 1146
Point Reyes Station, CA 94956
(415) 663-1170
marinrcd@svn.net

Charlette Sanders, District Conservationist
NRCS
1301 Redwood Highway
Petaluma, CA 94954
(707) 794-1242
charlette.sanders@ca.usda.gov

Morro Bay Program

Malcolm McEwen
Coastal San Luis RCD
545 Main Street, Ste. B-1
Morro Bay, CA 93442
(805) 772-4391
mamcewen@fix.net

EXHIBIT 3: Correspondence

Margy Lindquist, District Conservationist
NRCS
65 Main Street, Suite 108
Templeton, CA 93465
(805) 434-0396
margy.lindquist@ca.usda.gov

Navarro River Program

Patty Madigan
Mendocino County Resource Conservation District
PO Box 1697
Mendocino, CA 95460
(707) 964-0395
pmad@mcn.org

Tom Schott, District Conservationist
NRCS
405 S. Orchard Ave.
Ukiah, CA 94582
(707) 468-9223 x 112
thomas.schott@ca.usda.gov

Salinas River Program

Emily Hanson
Resource Conservation District of Monterey County
744 La Guardia Street, Bldg. A
Salinas, CA 93905
(831) 424-1036 x 124
rcdmonterey@yahoo.com

Danny Marquis
NRCS
522 N. Second Street
King City, CA 93930
(831) 385-5545
danny.marquis@ca.usda.gov

13. This Agreement shall be governed by the laws of the State of California, or Federal law as applicable. Actual or threatened breach of this Agreement may be prohibited or restrained by a court of competent jurisdiction.

EXHIBIT 3: Correspondence

14. The program and activities conducted under this agreement will be in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

15. This MOA is solely for the benefit of the People of the State of California, by and through DFG or its designated representative, RCDs, and NRCS.

16. From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this MOA. This MOA cannot be amended or modified in any way except by a written instrument duly executed by the Parties. In any action requiring the agreement or approval of either of the Parties, such agreement or approval shall not be unreasonably denied or withheld, so long as it does not substantially alter the MOA, duties and remedies of the Parties.

17. It is acknowledged that the purpose of this MOA is to set forth the roles and responsibilities of the Parties with respect to the coordination of the Program and the 1601 and 1603 Agreement approval processes.

18. This MOA shall be immediately effective upon execution by the Parties.

19. This MOA includes and incorporates the following:

EXHIBIT A1 - Elkhorn Slough Template 1601/1603 Agreement

A2 - Coastal Marin Template 1601/1603 Agreement

A3 - Morro Bay Template 1601/1603 Agreement

A4 - Navarro River Template 1601/1603 Agreement

A5 - Salinas River Template 1601/1603 Agreement

EXHIBIT B - Template Cooperator Agreement: Terms of Assistance and Notification
Regarding the Procedures for Conformance with Multiple Permits

EXHIBIT C1 - Elkhorn Slough Map of Geographic Scope

C2 - Coastal Marin Map of Geographic Scope

C3 - Morro Bay Map of Geographic Scope

C4 - Navarro River Map of Geographic Scope

C5 - Salinas River Map of Geographic Scope

Additional Exhibits associated with new signatories will be identified and referenced on the signature pages.

EXHIBIT 3: Correspondence

The Parties acknowledge and accept the terms and conditions of this MOA as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this MOA shall become operative on the last date written below.

NATURAL RESOURCES CONSERVATION SERVICE

Donald Peters, acting for Date: 5/7/03
Chuck Bell
State Conservationist
Authority: 16 U.S.C. 590(d) and 2005

CALIFORNIA DEPARTMENT OF FISH AND GAME

Robert W. Floerke Date: 5/13/03
Robert W. Floerke
Regional Manager, Central Coast Region

COASTAL SAN LUIS RESOURCE CONSERVATION DISTRICT

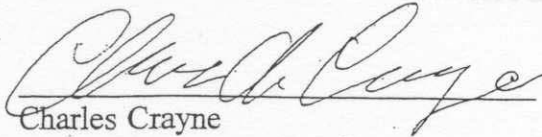
Linda Chipping Date: 1 MAY 2003
Neil Havlik LINDA CHIPPING
President

RESOURCE CONSERVATION DISTRICT OF MONTEREY COUNTY (for Elkhorn Slough and Salinas River Programs)

Paul Binsacca Date: 4/25/03
Paul Binsacca
President

EXHIBIT 3: Correspondence

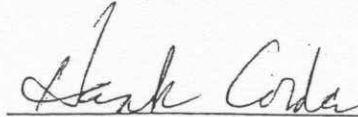
MENDOCINO RESOURCE CONSERVATION DISTRICT


Charles Crayne

Chairman

Date: 4-17-2003

MARIN RESOURCE CONSERVATION DISTRICT


Hank Corda

President

Date: 4-23-03

EXHIBIT 3: Correspondence



United States Department of the Interior

FISH AND WILDLIFE SERVICE

ARCATA FISH AND WILDLIFE OFFICE

1655 HEINDON ROAD

ARCATA, CA 95521

(707) 822-7201

FAX (707) 822-8136

August 22, 2002

In Reply Refer To:

1-14-02-1383

Mr. Tom Schott
District Conservationist
Natural Resources Conservation Service
Ukiah Service Center
405 South Orchard Avenue
Ukiah, California 95482

Subject: Informal Consultation on the Navarro River Watershed Permit Coordination Program, Mendocino County, California

Dear Mr. Schott:

This letter responds to your May 14, 2002, request for informal consultation under Section 7 of the Endangered Species Act of 1973, as amended. At issue are the potential effects that the Navarro River Watershed Permit Coordination Program, and the resultant watershed restoration, may have on the Federally threatened bald eagle (*Haliaeetus leucocephalus*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), and northern spotted owl (*Strix occidentalis caurina*).

The Natural Resources Conservation Service (NRCS) has determined that the work to be completed under the Navarro River Permit Coordination Program may affect, but is not likely to adversely affect the owl, murrelet, and the eagle. The project area is outside of critical habitat designated for both the owl and murrelet, and critical habitat has not been designated for the eagle. Consequently, critical habitat will not be affected. Other listed species under the jurisdiction of the U.S. Fish and Wildlife Service (Service) considered under previous coordination, such as the tidewater goby (*Eucyclogobius newberryi*) and California red-legged frog (*Rana aurora draytonii*), do not occur in the proposed action area. Listed species under the jurisdiction of the National Marine Fisheries Service are not addressed in this consultation.

EXHIBIT 3: Correspondence

2

Description of the Proposed Action

The biological assessment that accompanied your request for consultation describes the proposed action in detail, and it is briefly summarized here.

The Mendocino County Resource Conservation District (RCD) and the NRCS are using their authorities to restore in stream and adjacent habitats within the Navarro River watershed by working with willing landowners. Ninety-five percent of the watershed is privately owned and under some type of production. The Navarro River Watershed Permit Coordination Program aims to act as a catalyst for high-quality erosion-control and habitat restoration throughout the watershed. The Navarro River is listed as impaired under Section 303(d) of the Clean Water Act due to sediment related problems and water temperature. Consequently, erosion-control projects and habitat restoration throughout the watershed would improve water quality and habitat for fish and wildlife resources. Actions that may be permitted under the program include, but may not be limited to, the items listed here:

1. Existing access roads may be improved by controlling runoff and preventing erosion through out sloping and adding rolling dips;
2. Vegetation will be established in critical areas to stabilize soils, reduce sediment, provide stream side shading, provide habitat for migratory birds, and improve visual resources, and may involve grading, seedbed preparation, and mulching;
3. In-stream channels may be improved by restoring pool and riffle characteristics, and by strategic placement of root wads and natural rock;
4. Grade stabilization structures may be placed in non-fish bearing streams to reduce head cutting and decrease sediment yields;
5. Removal of old logging and farm access roads, and landings from within the watershed will improve habitat and reduce runoff and erosion;
6. Vegetation and structures will be used to stabilize and protect stream and road banks, and may be combined with in-stream channel improvement projects;
7. Damaged or degraded stream channels that can not be controlled with upstream practices, may be stabilized using suitable structures that produce a streambed favorable to wildlife and riparian growth; and
8. Water control structures and culverts may be replaced or retrofitted to provide proper function and fish passage.

Construction dimensions for the implementation of restoration activities are provided in Table 1 of the biological assessment. The geographic scope of the program is also identified. The estimated number of projects is 5-10 annually. The NRCS also proposes to submit a summary of proposed projects on an annual basis which will include details of construction techniques, stream conditions at the time of work, and proximity and connectivity of listed species habitat. After review, the Service may request NRCS or the RCD to take additional measures to avoid potential impacts to the owl, murrelet, or eagle. Projects that do not meet the requirements of the NRCS permit coordination program will be required to seek individual permits from State and Federal agencies. Salient features of the program designed to avoid or reduce potential adverse effects to the owl, murrelet, and eagle are listed in brief below:

EXHIBIT 3: Correspondence

3

General actions to avoid impacts to listed species

Unless more specific measures are identified for individual species, the following will apply to all projects:

- (a) NRCS staff will be trained and become familiar with the preferred habitats of the owl, murrelet, and eagle.
- (b) NRCS will identify and evaluate characteristic habitat conditions in proposed work areas during the NRCS pre-project design.
- (c) Disturbance of nesting pairs will be avoided during the breeding season.

Specific actions to avoid impacts to the northern spotted owl, marbled murrelet, and bald eagle

- (a) During project assessment, NRCS and RCD will assess if potential habitat occurs for the owl, murrelet, and eagle within 0.25 mile of the proposed work area.
- (b) The NRCS and RCD will assume presence of breeding pairs if suitable habitat exists but adequate surveys are lacking to determine absence or presence. Under these circumstances, work will be performed outside of the breeding period for the owl (February 1 to July 31), the murrelet (March 24 to September 15), and the eagle (January 1 to August 31).

Sound reduction measures may be used as an alternative to employing limited operating periods to ensure project-related noise is not significantly above background levels. Examples of sound reduction measures include, but may not be limited to laying a bed of sand before unloading gravel or rock from a truck, and disabling "back-up beepers" on equipment.

Conclusion

After reviewing your request for informal consultation and the biological assessment, we concur with the NRCS's determination that the Navarro River Watershed Permit Coordination Program may affect, but is not likely to adversely affect the northern spotted owl, marbled murrelet, and bald eagle. We reach our conclusion based on the following:

- 1. The salient features provided in the project description are designed to avoid or reduce adverse effects to the owl, murrelet, and eagle that may result from disturbance;
- 2. The annual pre-construction review will provide individual project review and a subsequent opportunity to preclude potential adverse effects; and
- 3. Suitable habitat will not be removed or degraded.

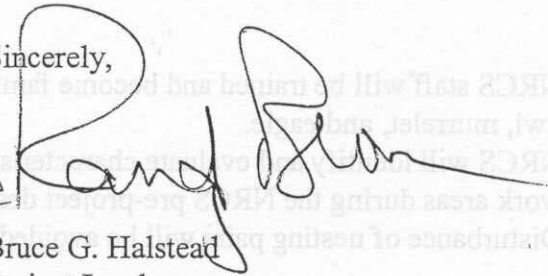
This concludes informal consultation on the Navarro River Watershed Permit Coordination Program. Reinitiation of consultation is required if: 1) new information reveals effects of the agency action that may adversely affect listed species or critical habitat in a manner or to an extent not considered during this consultation; 2) the agency action is subsequently modified in a manner that causes and effect to a listed species or critical habitat that was not considered during this consultation; or 3) a new species is listed or critical habitat designated that may be affected

EXHIBIT 3: Correspondence

4

by this action (50 CFR 402.16). Any questions regarding our consultation should be directed to Jim Watkins of my staff at (707) 822-7201.

Sincerely,

Acting
for


Bruce G. Halstead
Project Leader

cc: C. Remick, Sustainable Conservation, San Francisco, CA